

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANTHONY MITCHELL,

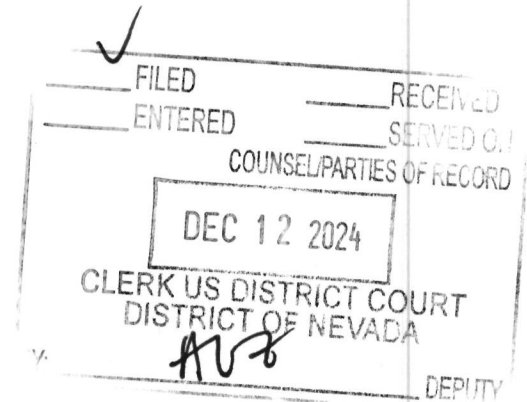
Plaintiff,

v.

RYAN COHEN, an individual;
ROBINHOOD FINANCIAL LLC, a
Delaware Limited Liability Company;
ROBINHOOD SECURITIES, LLC, a
Delaware Limited Liability Company;
ROBINHOOD MONEY, LLC, a Delaware
Limited Liability Company; THE
DEPOSITORY TRUST & CLEARING
CORPORATION, a New York Corporation;
20230930-DK-BUTTERFLY-1, INC., a New
York Corporation doing business as BED
BATH & BEYOND; OVERSTOCK.COM,
INC., a Delaware Corporation doing business
as BED BATH & BEYOND; RC
VENTURES LLC, a Delaware Limited
Liability Company; SUE E. GOVE, an
individual,

Defendants.

Case No. 2:24-cv-01042



**PLAINTIFF'S OPPOSITION TO DEFENDANTS RC VENTURES, LLC AND RYAN
COHEN'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

COMES NOW Plaintiff Anthony Mitchel (hereafter referred to as "Plaintiff"), to submit his Opposition to Defendants RC Ventures, LLC and Ryan Cohen ("Defendants")'s Motion to Dismiss Plaintiff's Complaint ("Motion") and respectfully requests this Honorable Court to deny

Defendants' Motion. In support, Plaintiff submits the accompany Memorandum of Points and Authorities and Declaration.

Dated: December 11, 2024

Respectfully submitted,


ANTHONY MITCHELL, Pro se

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<i>Hickory Travel Systems, Inc.</i> , 213 F.R.D. at 553	4
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PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES
IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

I. PRELIMINARY STATEMENT

Plaintiff objects to Defendants' Motion to Dismiss because Defendants have notice of the original complaint, and the alleged defect in service (if any) is technical, the failure to properly serve the original complaint is justifiable, and Plaintiff could be severely prejudiced if his complaint is dismissed without prejudice.

Plaintiff further objects to Defendants' Motion to Dismiss because Dismissal of a complaint is inappropriate when there exists a reasonable prospect that service may yet be obtained. If the Court decides that the service was not proper, Plaintiff asks to provide him with the opportunity to serve the Defendants. There is nothing in the record to indicate that proper service is impossible to effectuate.

II. FACTUAL BACKGROUND

Plaintiff filed the present complaint against RC Ventures, LLC and Ryan Cohen. Plaintiff has attempted to serve defendants RC Ventures, LLC and Ryan Cohen at the known address which is the address of attorneys previously represented these defendants but was not able to do this. The address for service was VINSON & ELKINS LLP, 1114 Avenue of the Americas, Ste 32nd Floor, New York, NY 10036. Plaintiff sent the complaint to these defendants by standard mail with signature delivery first, which were delivered and signed for - asking for voluntary waiver of service. This was ignored. Upon information and belief, the law firm representing Defendants have instructed the secretary at the base of the office building to deny access.

Plaintiff attempted to find alternative address for service and discovered that Ryan Cohen was a defendant in the civil action filed by the United States of America, Case No. 1:24-cv-02670. Plaintiff in that case stated that Ryan Cohen is the managing member of RC Ventures, LLC with the principal office and place of business at RC Ventures, LLC at P.O. Box 25250, PMB 30427, Miami, FL 33102. On March 28, 2024, Mr. Cohen's attorney W. Todd Miller signed the Stipulation and Order in the Case No. 1:24-cv-02670. The address of W. Todd Miller is Baker & Miller PLLC, Suite 300, 2401 Pennsylvania Avenue, N. W., Washington, D.C. 20037. Moreover, on or about June 13, 2023, Mr. Cohen filed Form 4 Statement of changes in beneficial ownership with US Securities and Exchange Commission. The address for Cohen and RC Ventures in this form was the same P.O. Box (P.O. Box 25250, PMB 30427, Miami, FL 33102). Plaintiff contacted the process server to find out if the process server can serve the P.O. Box because the U.S. Post Office does not accept service of process for any box holder. The process server responded that they would not be able to serve P.O. box.

After discovering these new addresses, Plaintiff filed the motion for substitute service, but it was denied on November 14, 2024. In the order, the Court requires more detail from Plaintiff about the efforts he took to find proper service addresses for these Defendants, the efforts he took to contact or serve these Defendants, and whether any other methods of communication with these Defendants might exist (for example, phone numbers, email addresses, social media accounts, or other information used to communicate with these Defendants).

On November 18, 2024 Plaintiff submitted documents for service the following addresses of Defendants' representatives: 1) Baker & Miller, 1325 Pennsylvania Avenue NW, STE 700,

Washington, DC 20004; 2) Baker & Miller PLLC, 50 California street suite 1500, San Francisco; 3) Robert Shindler, 2429 Manatee Ave East unit 3, Bradenton FL 34208; 4) Chip Romano, 117 Salem Church Road, Newark DE 19713; 5) Corporation Service Company, 251 Little Falls Drive, Wilmington DE 19808; 6) RC Ventures LLC, 701 S CARSON ST STE 200, Carson City, NV 89701.

On November 19, 2024 the process server served RC Ventures LLC at RC Ventures LLC, 701 S CARSON ST STE 200, Carson City, NV 89701. Documents were served on Ana Gomes. Upon information and belief, she represented that she accepts service on behalf of RC Ventures LLC.

On November 20, 2024 the process server served Ryan Cohen at RC Ventures LLC, 701 S CARSON ST STE 200, Carson City, NV 89701. Upon information and belief, Ryan Cohen is the managing member of RC Ventures, LLC.

On December 10, 2024, Defendants moved to dismiss for insufficiency of service of process. Dkt. 43.

III. ARGUMENT

A. Defendants' argument that the complaint should be dismissed for improper service is meritless.

In some instances, Rule 4 may be liberally construed "so long as the opposing party receives sufficient notice of the complaint." United Food & Commercial Workers Union v. Alpha Beta Co., 736 F.2d 1371, 1382 (9th Cir. 1984). The Ninth Circuit has held that failure to comply with service requirements does not warrant dismissal if: "(a) the party that had to be served personally received actual notice, (b) the defendant would suffer no prejudice from the defect in service, (c) there is a justifiable excuse for the failure to serve properly, and (d) the plaintiff

would be severely prejudiced if his complaint were dismissed." *Borzeka v. Heckler*, 739 F.2d 444, 447 (9th Cir. 1984). Plaintiff has met (a) and (b) of this test. In addition, the appearance of Defendants' counsel demonstrate that Defendants received the actual notice.

The Ninth Circuit has emphasized the public policy favoring disposition of cases on their merits. See *Pagalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). When there remains a chance that service can be accomplished and the defendant has not been prejudiced, courts generally quash service rather than dismissing the case. See *Hickory Travel Systems, Inc. vs. TUI AG*, 213 F.R.D. 547, 553 (N.D. Cal. 2003) (citing *Umbenhauer v. Woog*, 969 F.2d 25, 31 (3d Cir. 1992)).

Moreover, under the Ninth Circuit's four-part test, even if Plaintiff failed to comply with service requirements, it does not warrant dismissal. *Hamilton*, 981 F.2d at 1065. Defendants have notice of the original complaint, and the alleged defect in service (if any) is technical, the failure to properly serve the original compliant is justifiable, and Plaintiff could be severely prejudiced if his complaint is dismissed without prejudice. Therefore, the Court should deny Defendants' motion as to the remedy of dismissing Plaintiff's complaint.

B. Defendants have not demonstrated that alleged insufficient service caused prejudice.

Defendants' motion fails to demonstrate that Plaintiff's alleged insufficient service of process caused prejudice. See *Hickory Travel Systems, Inc.*, 213 F.R.D. at 553. Moreover, a chance remains that service of process can be accomplished. See *id.* Given the public policy favoring disposition of cases on their merits, the dismissal of the instant action is not warranted.

C. If the Court decides that the service was not proper, Plaintiff asks to provide him the opportunity to serve the Defendants.

If the Court decides not to dismiss, it quashes the ineffective service that has been made on the defendant and provides the plaintiff the opportunity to serve the defendant again effectively. See Stevens v. Security Pacific Nat'l Bank, 538 F.2d 1387, 1389 (9th Cir. 1976). See also S.J. v. Issaquah Sch. Dist. No. 411, 470 F. 3d 1288, 1293 (9th Cir. 2006) (noting that "even if service were insufficient—on which we express no opinion—we could not simply affirm dismissal because the district court has discretion to dismiss an action or to quash service"). "Dismissal of a complaint is inappropriate when there exists a reasonable prospect that service may yet be obtained. In such instances, the district court should, at most, quash service, leaving the plaintiffs free to effect proper service." Arasan Chip Sys., Inc. v. Sonix Tech. Co. Ltd., No. 509-CV-02172 JF PVT, 2010 WL 890424, at *1 (N.D. Cal. Mar. 8, 2010) (internal quotation omitted). Lasswell Found. for Learning & Laughter, Inc. v. Schwartz, Case No.: 3:16-cv-00497-BEN-WVG, 4 (S.D. Cal. Nov. 4, 2016).

Alternatively, if the Court decides that the service was not proper, Plaintiff asks to provide him with the opportunity to serve the Defendants. There is nothing in the record to indicate that proper service is impossible to effectuate. Thus, the Court should not dismiss the complaint for ineffective service.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests this court to deny Defendants' Motion to Dismiss Plaintiff's and grant Plaintiff any and all relief either in law or equity that this court deems just.

Dated: December 11, 2024

Respectfully submitted,


ANTHONY MITCHELL, Pro se

CERTIFICATE OF SERVICE

I CERTIFY that on December 11, 2024, I caused a true and correct copy of the foregoing PLAINTIFF'S OPPOSITION TO DEFENDANTS RC VENTURES, LLC AND RYAN COHEN'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT to be filed with the Clerk of the Court and serving on all parties of record via email as follows:

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Attorneys for Defendants RC Ventures LLC and Ryan
Cohen

Dated: December 11, 2024

Respectfully submitted,



ANTHONY MITCHELL, Pro se

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANTHONY MITCHELL,

Plaintiff,

v.

RYAN COHEN, an individual;
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Delaware Limited Liability Company;
ROBINHOOD MONEY, LLC, a Delaware
Limited Liability Company; THE
DEPOSITORY TRUST & CLEARING
CORPORATION, a New York Corporation;
20230930-DK-BUTTERFLY-1, INC., a New
York Corporation doing business as BED
BATH & BEYOND; OVERSTOCK.COM,
INC., a Delaware Corporation doing business
as BED BATH & BEYOND; RC
VENTURES LLC, a Delaware Limited
Liability Company; SUE E. GOVE, an
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Defendants.

Case No. 2:24-cv-01042

**DECLARATION OF ANTHONY
MITCHELL IN SUPPORT OF
OPPOSITION TO DEFENDANTS RC
VENTURES, LLC AND RYAN COHEN'S
MOTION TO DISMISS**

I, ANTHONY MITCHELL declare as follows:

1. I am over 18, residing at 618 Painted Opus Place, North Las Vegas 89084.
2. I am filing this declaration in support of my opposition to Defendants' Motion to dismiss complaint.

Page 1

**DECLARATION OF ANTHONY MITCHELL IN SUPPORT OF OPPOSITION TO
DEFENDANTS RC VENTURES, LLC AND RYAN COHEN'S MOTION TO DISMISS**

1 3. I have attempted to serve defendants RC Ventures, LLC and Ryan Cohen at the
2 known address which is the address of attorneys previously represented these defendants
3 but was not able to do this. The address for service was VINSON & ELKINS LLP, 1114
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7 first, which were delivered and signed for - asking for voluntary waiver of service. This
8 was ignored. Upon information and belief, the law firm representing Defendants have
9 instructed the secretary at the base of the office building to deny access.
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12 was a defendant in the civil action filed by the United States of America, Case No. 1:24-
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14 Ventures, LLC with the principal office and place of business at RC Ventures, LLC at
15 P.O. Box 25250, PMB 30427, Miami, FL 33102. On March 28, 2024, Mr. Cohen's
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21 same P.O. Box (P.O. Box 25250, PMB 30427, Miami, FL 33102).
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6. I contacted the process server to find out if the process server can serve the P.O. Box because the U.S. Post Office does not accept service of process for any box holder. The process server responded that they would not be able to serve P.O. box.

7. After discovering these new addresses, I filed the motion for substitute service, but it was denied on November 14, 2024. In the order, the Court requires more detail from Plaintiff about the efforts he took to find proper service addresses for these Defendants, the efforts he took to contact or serve these Defendants, and whether any other methods of communication with these Defendants might exist (for example, phone numbers, email addresses, social media accounts, or other information used to communicate with these Defendants).

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1 served on Ana Gomes. Upon information and belief, she represented that she accepts
2 service on behalf of RC Ventures LLC.

3 10. On November 20, 2024 the process server served Ryan Cohen at RC Ventures
4 LLC, 701 S CARSON ST STE 200, Carson City, NV 89701. Upon information and
5 belief, Ryan Cohen is the managing member of RC Ventures, LLC.
6

7 I declare under penalty of perjury under the laws of Nevada that the foregoing is true and
8 correct.
9

10 Dated: December 11, 2024

11 Respectfully submitted,

12 

13 ANTHONY MITCHELL, pro se
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19 **CERTIFICATE OF SERVICE**

20 I CERTIFY that on December 11, 2024, I caused a true and correct copy of the foregoing
21 DECLARATION OF ANTHONY MITCHELL IN SUPPORT OF OPPOSITION TO
22 DEFENDANTS RC VENTURES, LLC AND RYAN COHEN'S MOTION TO DISMISS to be
filed with the Clerk of the Court and serving on all parties of record via email as follows:

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14 Attorneys for Defendants RC Ventures LLC and Ryan
15 Cohen

16
17 Dated: December 11, 2024

Respectfully submitted,


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19 ANTHONY MITCHELL, Pro se
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